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12 UNITED STATES DISTRICT COURT

13 NORTHERN DISTRICT OF CALIFORNIA

14 SAN FRANCISCO DIVISION

15
16 SECURITIES AND EXCHANGE
COMMISSION,

17 Applicant,

18 v.

19 ELON MUSK,

20 Respondent.

Case No. 3:23-mc-80253-JSC

**MOTION FOR LEAVE TO FILE REPLY
IN SUPPORT OF MOTION FOR DE
NOVO DETERMINATION OF
DISPOSITIVE MATTER REFERRED TO
MAGISTRATE JUDGE**

Date: May 9, 2024

Time: 10:00 a.m.

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22
23 Respondent Elon Musk respectfully requests leave to file a Reply in support of his Motion
24 for De Novo Determination of Dispositive Matter Referred to Magistrate Judge (Dkt. No. 42). Mr.
25 Musk's proposed reply brief—submitted in compliance with Local Rule 7-3(c)'s provisions
26 governing motions—is filed concurrently with this motion and is attached as Exhibit A. Applicant
27 the Securities and Exchange Commission ("SEC") takes no position on this motion.
28

1 1. Federal Rule of Civil Procedure 72(b) and Civil Local Rule 72-3 set forth the
2 procedures for a party to object to a magistrate judge's ruling on a dispositive motion. Neither rule
3 specifically addresses the availability of a reply brief in support of objections to report and
4 recommendations. Local Rule 7-3(c), however, permits a reply brief in support of a motion.

5 2. Courts in this District have accepted and relied on reply briefs submitted in support
6 of a party's objections to a magistrate judge's ruling on a dispositive motion. *See, e.g., Pickard v.*
7 *Dep't of Justice*, 217 F. Supp. 3d 1081, 1085 (N.D. Cal. 2016) (considering reply brief filed in
8 support of motion for de novo determination).

9 3. More specifically, courts in this District have accepted reply briefs in support of a
10 party's objections to a magistrate judge's ruling on a dispositive motion in matters—like this one—
11 that should have been heard initially by a District Court but were inadvertently or erroneously
12 considered first by a magistrate judge. Dkt. No. 40; *see, e.g., Reply in Support of Motion for De*
13 *Novo Determination, Doe v. SEC*, No. C 11–80209 (CRB) (N.D. Cal. Oct. 21, 2011), Dkt. No. 24;
14 *Reply in Support of Objections to Report & Recommendation, EEOC v. Anna's Linens Co.*, 2006
15 WL 1329548, No. C 06-80009 (MMC) (N.D. Cal. June 30, 2006), Dkt. No. 44.

16 4. Additionally, a Reply is particularly warranted in this case because it is a significant
17 matter presenting important questions about the SEC's nearly two-year investigation into Mr.
18 Musk's ownership of shares in and acquisition of Twitter. Among other substantial legal issues, the
19 case involves the SEC's authority to conduct investigations with serial demands for testimony, as
20 well as questions about whether the SEC Enforcement Staff conducting the investigation have been
21 properly appointed and are properly removable under Article II of the Constitution.

22 5. The proposed Reply complies with the length and timing requirements for reply
23 briefs contemplated by Local Rule 7-3(c) because it is fewer than 15 pages and it was submitted
24 within one week of the date on which the opposition brief was due.

25 6. The SEC takes no position on the request to file a Reply.

26 7. Mr. Musk respectfully requests that the Court accept his proposed Reply, filed
27 concurrently and attached as Exhibit A.
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1 Dated: March 22, 2024

Respectfully submitted,

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4 /s/ Alex Spiro

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